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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-394

BOARD OF EDUCATION OF THE CITY OF DETROIT, a school district of the first class, et al.,

Petitioners,

—vs.—

WILLIAM G. MILLIKEN, Governor of the State of Michigan, et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This brief is filed on behalf of respondents Governor, Attorney General, State Board of Education, Superintendent of Public Instruction and State Treasurer of the State of Michigan, sometimes referred to herein collectively as Milliken, et al. These respondents accept the statement of the case contained in the petition insofar as it sets forth the procedural history of this case.

The petitioners' claims concerning the alleged desperate financial condition of the Detroit school system run throughout their petition. It is not the function of this brief in opposition to correct all of the financial omissions and representations contained therein. However, when the Court of Appeals entered the order here in dispute, it had before it the following two uncontroverted facts:

1. For the 1973-1974 school fiscal year, out of 531 Michigan school districts operating K-12 educational programs, 463 of such school districts had *lower* current operating expenditures per pupil than the Detroit school system, which ranked 68th from the top in current operating expenditures per pupil.

2. For the same school fiscal year, the Detroit school system's revenues exceeded its expenditures by slightly over 7 million dollars.

ARGUMENT

THE PETITION SHOULD BE DENIED FOR LACK OF MERIT.

A. The order sought to be reviewed is in conformity with the decisions of this Court.

In *Milliken* v *Bradley*, 418 U.S. 717 (1974), this Court remanded this cause for the implementation of a desegregation remedy within the Detroit school system. During the course of the subsequent remedial proceedings, Milliken, et al, have consistently taken the position that the legislatively appropriated state school aid funds disbursed to the Detroit school system may be used by it for implementation of a pupil desegregation remedy.[1] Thus, this cause is in marked contrast to *North Carolina State Board of Education* v *Swann*, 402 US 43 (1971), where this Court held invalid a state statute precluding the use of any public funds for transportation to achieve desegregation.

Respondents Milliken, et al, have, however, consistently opposed attempts by both plaintiffs and petitioners herein to secure judicial relief below to compel the payment by them of additional, unappropriated funds from the State Treasury to be utilized in implementing a desegregation remedy. This opposition is grounded upon the following basic legal principles.

First, it is settled law that the nature of the violation deter-

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[1] In addition to its local property tax revenues and federal funds, the Detroit school system received approximately 155 million dollars in legislatively appropriated state school aid funds for the 1974-1975 school fiscal year.

mines the scope of the remedy. *Swann* v *Charlotte-Mecklenburg Board of Education*, 402 US 1, 16 (1971); *Milliken* v *Bradley, supra*, 418 US, at 738. In this cause, this Court has previously determined that there is no constitutional violation in the area of school district finance, *Milliken* v *Bradley, supra*, 418 US at 751-752, relying on *San Antonio School District* v *Rodriguez*, 411 US 1 (1973). Thus, there is no legal predicate for compelling Milliken, et al, to pay out additional, unappropriated funds from the State Treasury to or for the benefit of the Detroit school system.

Second, an order compelling Milliken, et al, to pay out additional, unappropriated funds from the State Treasury would contravene the Eleventh Amendment and this Court's holding in *Edelman* v *Jordan*, 415 US 651 (1974), that the federal courts are precluded from compelling the payment of state funds from the State Treasury. The order entered below by the District Court and modified on appeal concerning the acquisition of and payment for 150 school buses (Petitioners' Appendix at p 5a) is not prospective injunctive relief to conform one's conduct to federal law that has, at most, an ancillary effect on the State Treasury. *Edelman* v *Jordan, supra*, 415 US, at 667-668. Rather, it is a direct order to pay unappropriated funds from the State Treasury, i.e., a prohibited award of money damages against the State of Michigan.

Third, in *Griffin* v *County School Board of Prince Edward County*, 377 US 218, 233 (1964), this Court ruled that the trial court could compel the County Board of Supervisors "to exercise *the power that is theirs* to levy taxes" to operate a unitary public school system. (emphasis added) Under Michigan law, none of the respondents, Milliken, et al, have any lawful authority or power to disburse additional, unappropriated funds from the State Treasury to pay 100% of the cost of acquiring school buses for use by Detroit or any other Michigan

school district. Mich Const 1963, art 5, § 18 and art 9, § 17. The *Griffin* case, *supra*, is authority for compelling local officials to use their lawful fiscal powers under state law to operate a unitary school system. It is not authority for the proposition that federal courts may compel the payment of additional, unappropriated funds from the State Treasury to finance school desegregation remedies. *Edelman* v *Jordan, supra*, 415 US, at 667, n 12.

B. The order here under attack is consistent with state law in accordance with sound principles of federalism.

The Court of Appeals order here under attack compels the Detroit Board of Education to acquire 150 school buses and requires Milliken, et al, *to pay or reimburse* 75% of the costs of such acquisition. Further, the Court of Appeals order modified the District Court's order to be "consistent with the spirit and purposes of the constitutional and statutory provisions and the case law of the State of Michigan." (Petitioners' Appendix, p 8a)

The Detroit Board of Education has the statutory authority to acquire school buses and to issue its obligations for such purpose for a 6 year period, pledging in payment its general fund property tax revenues and state school aid funds. Section 594 of 1955 PA 269, MCLA 340.594; MSA 15.3594. (Respondents' Appendix, p 1a) Further, Detroit, like all other Michigan school districts, is eligible to receive up to 75% reimbursement, from legislatively appropriated state school aid funds, of the cost, including interest costs, of acquiring school buses over a 7 year period. Section 71(1) of 1972 PA 258, as amended by 1975 PA 261, MCLA 388.1171; MSA 15.1919 (571) and R 340.276, 1972 Annual Administrative Code Supplement, p 6165. (Respondents' Appendix, pp 1a-3a)

On or about September 9, 1975, the Detroit Board of Education sold its notes in the amount of $2,675,000.00 to finance the purchase of 150 school buses, with such notes to be paid over a six year period. Thus, the Detroit school system has the borrowed funds to fulfill its bus purchase contracts with the bus vendors. Further, the Detroit school system will receive legislatively appropriated state school aid categorical transportation funds, over a seven year period, in reimbursement of 75% of its bus purchase costs. This is essentially the same financial result that would obtain, under state law, irrespective of whether Milliken, et al, were included in the order of the Court of Appeals here under scrutiny.

One additional financial reality should be noted. The Detroit Board of Education, in paying 25% of the bus purchase costs, may utilize both its local property tax revenues *and* its general purpose state school aid funds. Sections 18, 21 and 25 of 1972 PA 258, as amended by 1975 PA 261, MCLA 388.1118; MSA 15.1919(518), MCLA 388.1121; MSA 15.1919(521), MCLA 388.1125; MSA 15.1919(525). In the 1974-1975 school fiscal year, Detroit received approximately 139 million dollars in local property tax revenues and 133 million dollars in general purpose state school aid funds.

The Court of Appeals order is consistent with state law. Under such order, the Detroit school system is successfully utilizing essentially the same financial procedures that all other Michigan school districts utilize in acquiring and paying for school buses. This result is in accord with sound principles of federalism that state systems of raising and disbursing funds for public education are entitled to judicial deference rather than strict judicial scrutiny. *Rodriguez, supra,* 411 US, at 44.

C. The order sought to be reviewed is not in conflict with the decisions of other Courts of Appeals.

Petitioners claim that the order of the Sixth Circuit Court of Appeals herein is in conflict with the decisions of other courts of appeals. However, a cursory examination of the cases cited by petitioners on this point reveals that no such conflict exists. None of the cases cited by petitioners hold that the federal courts may compel the disbursement of additional, unappropriated funds from the State Treasury to finance the purchase of buses for a school desegregation remedy.

The case relied upon most heavily by petitioners to show an alleged conflict among the circuits is *United States* v *State of Missouri,* 515 F2d 1365 (CA 8, 1975). However, that case dealt with the local maximum property tax rate to be established in a school district formed for desegregation purposes by the merger of three pre-existing school districts. The district court had established the tax rate at a level above that approved under Missouri law by the voters in any of the three school districts to be merged. On appeal, the Eighth Circuit Court of Appeals reversed the trial court and established, as the maximum tax rate, the highest of the three tax rates previously approved by the voters in the three merged school districts, noting that the Missouri Constitution requires a uniform tax levy within the geographical limits of the taxing authority. *United States* v *State of Missouri, supra,* 515 F2d, at 1371-1373.

Thus, such case is not authority for the proposition that the federal courts may, in disregard of state law, and the Eleventh Amendment, compel the payment of additional, unappropriated funds from the State Treasury to finance a school desegregation remedy. Rather, the Eighth Circuit Court of Appeals decision relied upon by petitioners kept the maximum local tax rate within the limits previously set by the voters in

one of the three school districts to be merged and applied it to the new school district pursuant to the uniformity requirements of Missouri law.

CONCLUSION

The order entered below is in conformity with the prior decisions of this Court. The financial result contained therein fits Michigan law in terms of acquiring and paying for school buses by local school districts. The order sought to be reviewed is not in conflict with the decisions of other courts of appeals. Therefore, respondents Milliken, et al, request this Court to enter its order denying the petition for a writ of certiorari.

Respectfully submitted,

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APPENDIX

U.S. Const. Amend. XI:

> "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

Mich. Const. 1963, art 9, § 17:

> "No money shall be paid out of the state treasury except in pursuance of appropriations made by law."

Section 594 of 1955 PA 269, MCLA 340.594; MSA 15.3594:

> "The board of any district furnishing transportation may purchase buses on title-retaining contracts or by the issuance of obligations of the district therefor, pledging in payment moneys in the general fund or funds received from the state for aid in the support of the public schools: Provided, That such obligations issued for this purpose shall not be issued for a longer time than the estimated period of usefulness of the buses for which issued, as determined by the board, and in no event for a longer period than 6 years."

Section 71(1) of 1972 PA 258, as amended by 1975 PA 261, MCLA 388.1171; MSA 15.1919(571):

> "(1) From the amount appropriated in section 11, there is allocated not to exceed $62,800,000.00 to reimburse districts and intermediate districts transporting pupils from the vicinity of their homes to the schools they attend, or from their homes or schools to area vocational

centers or other facilities providing approved occupational programs and back again in amounts determined by the department but not to exceed 75% of the actual cost of the transportation. The rate of reimbursement for contracted transportation services or transportation services provided through the use of public transit systems shall be the same as for school district owned bus fleets. Reimbursement shall not be granted for the transportation of children living within 1½ miles of the schools they attend, except for handicapped children, as defined in rules promulgated by the state board, whom the department determines cannot safely walk the distance, and persons in attendance at alternative education programs for pregnant persons. Transportation distances shall be measured along public streets and highways."

R 340.276, 1972 Annual Administrative Code Supplement, p 6165:

"Rule 6. (1) Depreciation of a school bus shall be the actual cost of the bus, plus interest on funds borrowed for the purchase, less trade-in allowances or amounts received for buses replaced equally divided over a 7 year period. Depreciation shall not be allowed for a bus, used or new, in operation for 7 or more years except that all buses being depreciated over 10 years at the time this rule takes effect shall have the remainder of their depreciation credited as follows:

Years of Depreciation	Percentage of Cost Plus Interest
10	10%
9	20%
8	30%
7	40%
6	35.8%

5	31.5%
4	27.2%
3	22.9%
2	18.6%

In the following years, the depreciation shall be 1/7 for not more than 7 years of the life of each bus. A school district purchasing a used bus may apply the undepreciated value of the bus against future depreciation in an amount equal to the number of years needed to make the total depreciation on the bus equal to 7 years in relation to the life of the bus at the time of its acquisition by the school district.

(2) Depreciation on a bus purchased after the effective date of this rule shall begin in the fiscal year it was accepted for use if acceptance was made on or before December 15 of the year. Depreciation shall begin in the following fiscal year if acceptance was made on or after December 16 of the fiscal year.

(3) Buses purchased on a lease-purchase contract shall be treated as a purchase and depreciated according to subrule (1)."